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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT JAMES CARTER,

Defendant and Appellant.

F053052

(Super. Ct. No. VMH0010560)

**O P I N I O N**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Tulare County. Melinda Myrle Reed, Judge.

Patricia L. Watkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Daniel B. Bernstein and Janis Shank McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J.; Cornell, J.; and Kane, J.

## **INTRODUCTION AND FACTS**

On August 31, 2006, the Tulare County District Attorney's office, at the request of the Valley Mountain Regional Center, filed a Welfare and Institutions Code section 6500 petition requesting an order extending the commitment of appellant Scott James Carter to the State Department of Developmental Services because he is mentally retarded and a danger to himself and others. On April 6, 2007, jury trial commenced. On April 10, 2007, the jury found the petition to be true.<sup>1</sup> The order for a one-year commitment was filed on April 17, 2007. Appellant filed a timely notice of appeal.

Appellant contends the jury was improperly instructed on the burden of proof. We disagree and will affirm.

## **DISCUSSION**

The jury was instructed on reasonable doubt with a modified version of CALCRIM No. 220, as follows:

“The fact that a petition has been filed against the [appellant] is not evidence that the petition is true. You must not be biased against the [appellant] just because he has been brought to trial.

“A respondent in a commitment under Welfare and Institution[s] Code §6500 is presumed to be not mentally retarded. This presumption requires that the People [must] prove each element of the allegation that [appellant] is mentally retarded pursuant to Welfare and Institutions Code §6500 beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt unless I specifically tell you otherwise.

“Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the petition is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

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<sup>1</sup> It is not necessary to set forth a summary of the evidence adduced at trial because the sole appellate issue concerns an alleged conflict between two jury instructions.

“In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the respondent is mentally retarded pursuant to Welfare and Institutions Code §6500 beyond a reasonable doubt, he is entitled to a dismissal and you must find the petition not true.”

The jury was given the following special instruction concerning the elements that the People are required to prove beyond a reasonable doubt:

“In this case the question for your determination is whether the [appellant] is a mentally retarded person, and that he is a danger to himself or others.

“The People have the burden of proving beyond a reasonable doubt that:

“1. [Appellant] suffers from mental retardation, and

“2. [Appellant] is a danger to himself or others, which means there is a potential for [him] to cause infliction of substantial harm upon himself or others; and

“3. [Appellant’s] mental retardation causes him to have serious difficulty in controlling his dangerous behavior.”

Appellant argues CALCRIM No. 220 was prejudicially incomplete and conflicted with the special instruction because it only told the jurors they needed to find that appellant was mentally retarded beyond a reasonable doubt and did not mention that they also are required to find appellant is a danger to himself or others and that his retardation causes him to have serious difficulty in controlling his dangerous behavior beyond a reasonable doubt. We are not convinced.

The applicable standard of review is well-established:

“If a jury instruction is ambiguous, we inquire whether there is a reasonable likelihood that the jury misunderstood and misapplied the instruction. [Citations.] “[T]he correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction.” [Citations.]’ [Citation.]” (*People v. Smithey* (1999) 20 Cal.4th 936, 963-964 (*Smithey*).)

We find no reasonable likelihood that CALCRIM No. 220, as given, could have been understood in the manner suggested by appellant. When CALCRIM No. 220 is read as a whole and considered in context with the special instruction, it becomes evident that the jury was correctly instructed on the burden of proof. The purpose of CALCRIM No. 220 is to instruct on the burden of proof and the concept of reasonable doubt. CALCRIM No. 220, as given, specifically stated that “the People [must] prove *each element* of the allegation that [appellant] is mentally retarded.” (Emphasis added.) Thus, the phrase “mentally retarded” in CALCRIM No. 220 is reasonably understood as an abbreviated reference to the three required elements that are set forth in the special instruction. The two instructions do not conflict. No error appears. (*Smithey, supra*, 20 Cal.4th at p. 964.)

#### **DISPOSITION**

The judgment is affirmed.